

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON ALAN STEELE,

Defendant.

Case No. 2:12-cr-00405-APG-CWH

**ORDER DENYING MOTION TO
VACATE OR CORRECT SENTENCE
PURSUANT TO 28 U.S.C. § 2255**

ECF No. 48

Defendant Jason Steele pleaded guilty to one count of bank robbery in violation of 18 U.S.C. § 2113(a). ECF No. 29. Based on that offense and two prior federal bank robbery convictions, he was sentenced to 151 months in prison as a career offender under United States Sentencing Guidelines § 4B1.1. ECF Nos. 32, 33. Steele subsequently filed a motion under 28 U.S.C. § 2255 to vacate his sentence. ECF No. 48. He contends that he does not qualify as a career offender based on the application of *Johnson v. United States*, 135 S.Ct. 551 (2015). Steele is incorrect.

Johnson deemed unconstitutionally vague the Armed Career Criminal Act's residual clause defining "violent felony." The residual clause in Sentencing Guideline § 4B1.2(a)(2) contains identical language. The Supreme Court of the United States recently held that *Johnson* announced a new substantive rule that has retroactive effect. *Welch v. United States*, 136 S.Ct. 1257, 1265 (2016).¹ Nevertheless, Steele remains a career offender under Sentencing Guideline § 4B1.2(a)(1). Under binding Ninth Circuit precedent, bank robbery qualifies as a crime of violence under the elements clause of § 4B1.2(a)(1). In *United States v. Selfa*, 918 F.2d 749, 751 (9th Cir. 1990), the Ninth Circuit held "that persons convicted of robbing a bank 'by force and violence' or

¹ Even more recently, the Supreme Court granted certiorari to address the question, among others, of whether *Johnson* applies retroactively to collateral cases challenging federal sentences enhanced under the residual clause in § 4B1.2(a)(2). *Beckles v. United States*, No. 15-8544, 2016 WL 1029080, at *1 (U.S. June 27, 2016).

1 ‘intimidation’ under 18 U.S.C. § 2113(a) have been convicted of a ‘crime of violence’ within the
2 meaning of Guideline Section 4B1.1.”

3 Steele questions the validity of *Selfa* in light of more recent decisions in *Descamps v. United*
4 *States*, 133 S. Ct. 2276 (2013); *Johnson v. United States*, 559 U.S. 133, 140 (2010); and *Taylor v.*
5 *United States*, 495 U.S. 575, 602 (1990). However, the Ninth Circuit recently cited *Selfa* with
6 approval, confirming its continuing precedential value for the proposition that bank robbery
7 qualifies as a crime of violence under § 4B1.2(a)(1). *United States v. Howard*, No. 15-10042, 2016
8 WL 2961978, at *1 (9th Cir. May 23, 2016); *see also United States v. Watson*, No. 14-00751-01
9 DKW, 2016 WL 866298, at *7-8 (D. Haw. Mar. 2, 2016) (holding that bank robbery qualifies as a
10 crime of violence). Based on *Selfa*, Steele qualifies as a career offender under the elements clause
11 of Sentencing Guideline § 4B1.2(a)(1). Thus, his motion to vacate and correct his sentence must
12 be denied.

13 In denying Steele’s § 2255 motion, I also must decide whether to issue a certificate of
14 appealability. *See* R. 11 Governing § 2255 Cases in the U.S. Dist. Cts. (“The district court must
15 issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”).
16 “The standard for a certificate of appealability is lenient.” *Hayward v. Marshall*, 603 F.3d 546, 553
17 (9th Cir. 2010) (en banc), *overruled on other grounds by Swarthout v. Cooke*, 562 U.S. 216 (2011).
18 A petitioner is required to demonstrate only “that reasonable jurists could debate the district court’s
19 resolution or that the issues are adequate to deserve encouragement to proceed further.” *Id.* (citation
20 omitted). The standard “requires something more than the absence of frivolity but something less
21 than a merits determination.” *Id.*

22 Reasonable jurists could debate the impact of *Johnson* on the Sentencing Guidelines, and
23 the validity of older cases like *Selfa* after *Descampes*, *Rendon*, and *Johnson*. The Supreme Court’s
24 recent grant of certiorari to address the applicability of *Johnson* to § 4B1.2(a)(2) confirms that this
25 area continues to evolve. Thus, I grant Steele a certificate of appealability.


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1 IT IS THEREFORE ORDERED that Steele's motion (ECF No. 48) is **DENIED**.

2 IT IS FURTHER ORDERED that Steele is **GRANTED** a certificate of appealability.

3 Dated this 28th day of June, 2016.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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